IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6429 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

IDRISH HHAFIZ RAHIM SHEIKH

Versus

STATE OF GUJARAT,

Appearance:

MR MM TIRMIZI for Petitioner

MR SK PATEL,Learned AGP for Respondent No. 1

MS PJ DAWAVALA for Respondent No. 4

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/09/2000

ORAL JUDGEMENT

1. The petitioner has filed the present petition under Article 226 read with Articles 14, 19, 21 and 22 of the Constitution of India challenging the order of his

detention dated 5.6.2000 recorded by the District Magistrate Panchamahal at Godhara in exercise of powers conferred on him by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 on various grounds.

2. The facts of the case may briefly be stated as follows :

That the second respondent conducted some inquiry and thereafter, came to the decision that the petitioner was required to be detained in accordance with the aforesaid provisions of law and, therefore, the said order was passed on 5.6.2000 detaining the petitioner in view of the section 3(2) of the said Act.

The petitioner has challenged the aforesaid order of detention on various grounds. However, at the time of arguments learned advocate for the petitioner has restricted his arguments to the point that the documents supplied by the respondent to the petitioner were not legible and, therefore, the petitioner was prevented from making effective representation against the aforesaid order of detention and, therefore, his statutory right of making effective representation has been taken away and the same is in violation of principles of natural justice. Therefore, the petitioner claims that the petitioner had a valuable right of making the representation against his detention and since, the petitioner was not in a position to avail of the statutory benefits, detention cannot be sustained and, therefore, the petitioner has prayed for appropriate writ, order or direction for quashing and setting aside the aforesaid order of detention dated 5.6.2000.

3. On receiving the petition, rule was issued and Mr. S.K.Patel, learned AGP appeared for respondent nos.1,2 and 3. Ms. P.J.Dawavala appeared for respondent no.4. I have heard learned advocates for the parties and have perused the papers. On behalf of the petitioner rejoinder affidavit has been filed by Ilias Hafiz Rahim Shekth which may be taken on record. Since the arguments have been restricted to the point of non-supply of legible documents to the petitioner, the discussions are also restricted on this short ground to dispose of the case.

4. During the course of arguments, it has been submitted that page-105 which has been supplied to the petitioner was considered and relied upon by the detaining authority for the purpose of passing the order

of detention against the petitioner. It has been further submitted that the it is not possible to make out anything from the said documents since the documents are not at all legible. Mr. S.K.Patel, learned AGP has also no any alternative but agree with the submission of the learned advocate for the petitioner that these documents are wholly illegible. It is not in dispute that these documents was considered by the detaining authority for the purpose of detention of the petitioner. This shows that the documents supplied to the petitioner was not legible. Now, it is clear that the petitioner has valuable right of making effective representation against his detention. This right should be effectively exercised only if the legible copies of the document has been supplied. Since the petitioner was not supplied with legible copies of documents, petitioner has lost his valuable right of making effective representation against his detention. Therefore, he could not avail of the said opportunity which was a statutory right of the petitioner and the said right has been guaranteed under Article 22(5) of the Constitution of India. This shows that the valuable right of the petitioner has been lost.

4. In this case it would be worthwhile to a refer to decision of this Court in Special Civil Application No. 618 of 1999 dated 3.3.2000 (Coram : B.C.Patel,J). Para. 3 of the said judgement reads as follows :

> Without addressing about legality of the grounds of detention, the learned advocate for the petitioner submitted that the petition is required to be disposed of on a short ground as the papers supplied to the detenu are not legible. In view of this, the detenu is deprived from making effective representation. He further stated that the all papers are not illegible but some papers are illegible and as a result of which, his right has been adversely affected. Mr. Patel, learned AGP after going through the papers, is not in a position to state that all the papers are legible, some of the papers are illegible. Suffice it to say that the same has deprived the detenu from making effective representation and hence the detention order requires to be quashed and set aside. The detention order passed against the detenu is hereby quashed and set aside. The detenu shall be released forthwith if he is not required in any other case. The petition is allowed. Rule is made absolute.

5. Even the Hon'ble Supreme Court has also considered this aspect in the case of Madan Lal Anand Vs. Union of India reported in AIR 1990 SC 176 and has held that if a document has been relied upon for the purpose of detention and if the same is not legible then the detention order cannot be sustained.

6. It would therefore be clear that if a document is relied upon and considered by the detaining authority for the purpose of detaining the petitioner and if the copy of that document supplied to the petitioner is not legible then valuable right of the petitioner of making effective representation has been taken away. This would be in violation of the principles of natural justice. It would also hurt the statutory right of the petitioner to make effective representation and ultimately, it would hurt the constitutional right under Article 22(5) of the Constitution of India. In that view of the matter, the aforesaid order of detention suffers from aforesaid infirmity and consequently, it is required to be quashed and set aside.

7. For the reasons stated above, this petition is required to be allowed and the order of detention is required to be set aside. Therefore, the present petition is allowed and the order of detention passed by the District Magistrate Panchamahal at Godhara against the petitioner on 5.6.2000 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute with no order as to costs.

(D.P.Buch,J)

(vipul)